

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY P. FITZGERALD, and
DAVID J. ROTHER

Appeal No. 95-3161
Application 08/090,921¹

ON BRIEF

Before URYNOWICZ, LEE and CARMICHAEL, Administrative Patent Judges.

LEE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1, 5 and 9. Claims 2-4, 6-8 and 10-17 have been canceled. No claim has been allowed.

¹ Application for patent filed July 12, 1993. According to the appellants, the application is a continuation of application 07/776,201, filed October 15, 1991, now Patent No. 5,255,251, which is a continuation-in-part of application 07/602,631, filed October 24, 1990, now Patent No. 5,123,000.

Appeal No. 95-3161
Application 08/090,921

References relied on by the Examiner

Taylor et al. (Taylor) 5,153,862 Oct. 06, 1992

Tamachi JA 64-50275 Feb. 27,
1989
(Japanese patent)

The Rejections on Appeal

Claims 1, 5 and 9 stand finally rejected under 35 U.S.C.
§ 112, second paragraph, as being indefinite.

Claims 1, 5, and 9 also stand finally rejected under 35
U.S.C. § 103 as being unpatentable over Tamachi and Taylor.

The Invention

The invention is directed to an optical disk cartridge
handling apparatus. The sole independent claim, claim 1, is
reproduced below:

1. An optical disk cartridge handling apparatus for
storing, handling, reading and writing of optical discs
stored in cartridges which store data, comprising:

(a) an enclosed cartridge magazine for
protection of the cartridges with an open front
removable from the apparatus for loading and
unloading all the cartridges as a group in the
apparatus, the magazine having slots and
cartridge retainer means therein for vertically
storing and releasably holding the cartridges,
and a cartridge magazine alignment means, to
index and guide the magazine in one way only

into and out of the apparatus for proper orientation of the open front within the apparatus;

(b) a flipper mechanism adapted to receive one of the cartridges from both the magazine and a vertically oriented optical disk drive with a vertical cartridge slot and a flipper cartridge retainer mechanism to releasably hold the cartridge within the flipper.

(c) a picker mechanism comprised of a cartridge pusher and picker mounted along, below and adjacent the flipper mechanism for moving the cartridge into and out of the flipper mechanism from both the magazine and the optical disk drive cartridge slot; and

(d) a horizontal traverse mechanism below the picker mechanism for supporting and moving the flipper mechanism along a horizontal axis of motion to locate the flipper mechanism adjacent from both the magazine and the optical disk drive.

Opinion

We do not sustain either rejection of claims 1, 5 and 9. Our consideration of the rejections does not go beyond the reasons and rationale as presented by the examiner in support of the rejections.

The rejection for indefiniteness

We do not sustain the rejection of claims 1, 5 and 9 for indefiniteness.

Appeal No. 95-3161
Application 08/090,921

Claim 1 recites, in pertinent part: "a cartridge magazine alignment means to index and guide the magazine **in one way only** into and out of the apparatus for proper orientation of the open front within the apparatus" (emphasis added). According to the examiner (answer at pg. 4), the above-quoted claim language is vague and indefinite because it is unclear how "into and out of the apparatus" can be considered "in one way only."

Obviously, the reference "in one way only" does not refer to the direction of motion relative to the apparatus, since the same clause specifies the motion to be into and out of the apparatus.

It is unreasonable to insist on reading the claim that way, since the specification does not support that reading and since an alternative reasonable reading exists which is consistent with the specification. The alignment means provides only one way for moving the magazine into and out of the apparatus, in proper orientation, not many different ways

Appeal No. 95-3161
Application 08/090,921

for doing the same. In other words, the claim requires that there be no choices in what to do for moving the magazine into and out of the apparatus if the magazine is to be oriented properly in the apparatus. For instance, with respect to claim 1, it can be seen in Figure 1 that the tong 82 must be aligned with and fit within groove 64, if the magazine 70 is to be properly oriented with the apparatus.

Accordingly, claims 1, 5 and 9 are not vague or indefinite. We do not sustain the rejection of claims 1, 5 and 9 on the ground of indefiniteness.

The rejection of claims 1, 5 and 9
as being unpatentable over Tamachi and Taylor

We reject the appellants' argument that the examiner ignored the claim requirement that the magazine alignment means is for proper orientation of the open front of the magazine within the apparatus. Even if Taylor's magazine is designed to be moved

into and out of the carrier 18 either end first, which the appellants have not established to be the case, the resulting orientation of the magazine in the apparatus would nevertheless be the proper orientation by design. Either end of Taylor's magazine can reasonably be considered as the open front. Taylor contemplates only one way for moving the magazine into and out of carrier 18 in the apparatus, i.e., by alignment of rails 110 on the magazine with flanges 112 on the carrier (column 7, lines 29-32). The "only one way" as claimed by the appellants is met by alignment of Taylor's rails and flanges. The claims are not so specific as to require that reversing the ends of the magazine necessarily constitutes a different way of moving the magazine into and out of the apparatus. The claim term "way" does not have to be read so narrowly. Thus, the only way provided by Taylor for moving the magazine into and out of the apparatus and in proper orientation is that of aligning the rails 110 on the magazine with the flanges 112. It should be noted that during examination, claim terms are properly construed according to their broadest reasonable interpretation consistent with the specification. In re Zletz, 893 F.2d 319,

Appeal No. 95-3161
Application 08/090,921

321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1990); In re Yamamoto,
740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984); In re
Pearson, 494 F.2d 1399,

1404, 181 USPQ 641, 645 (CCPA 1974); In re Prater, 415 F.2d
1393, 1404, 162 USPQ 541, 550 (CCPA 1969). It cannot be
disputed that the point or focus is on ensuring the proper
orientation of the magazine.

We also reject the appellants' argument that Tamachi does
not disclose a flipper cartridge retainer mechanism to
releasably hold the cartridge within the flipper. While it is
true that the part 41 referenced by the examiner is a portion
of the picker mechanism which pulls a cartridge from the
stacker into the flipper 26, the same part continues to hold
the cartridge in the flipper while the cartridge is being
carried or moved by the flipper. The examiner is correct that
Tamachi discloses a flipper mechanism 26 which includes a
flipper cartridge retainer mechanism. Undoubtedly, part 41 is
a portion of the flipper
mechanism 26. It is inconsequential that the same structure

Appeal No. 95-3161
Application 08/090,921

serves additional functions as a part of another mechanism.

We are persuaded by the appellants, however, that the examiner erred in finding that Tamachi discloses a picker mechanism which is along, **below**, and adjacent the flipper mechanism. As is clearly shown in Tamachi's drawings, and as

pointed out by the appellants, Tamachi discloses an integrated flipper and picker mechanism wherein the picker mechanism is actually contained within the flipper mechanism 26. No portion of parts 41a, 41b, 41c, 41d, or 30-46 inclusively, can reasonably be deemed to be below the flipper mechanism 26. The examiner has not demonstrated the reasonableness of his finding that Tamachi's picker mechanism is below the flipper mechanism 26 which includes the entirety of the structure shown in Tamachi's Figures 3 and 4. While the claim does not preclude having portions of the picker mechanism level with or above the flipper mechanism, at least a significant or substantial portion of the picker mechanism, if not the bulk

Appeal No. 95-3161
Application 08/090,921

thereof, must be placed below the flipper mechanism. That, however, the examiner has not shown to be so in Tamachi.

For the foregoing reasons, we do not sustain the rejection of claims 1, 5 and 9 as being unpatentable over Tamachi and Taylor.

Conclusion

The rejection of claims 1, 5 and 9 under 35 U.S.C. § 112, second paragraph, as being indefinite is reversed.

The rejection of claims 1, 5 and 9 under 35 U.S.C. § 103 as being unpatentable over Tamachi and Taylor is reversed.

REVERSED

Appeal No. 95-3161
Application 08/090,921

STANLEY M. URYNOWICZ, Jr.)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
JAMESON LEE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
)	
JAMES T. CARMICHAEL)	
Administrative Patent Judge)	

Appeal No. 95-3161
Application 08/090,921

Paul L. Sjoquist
Palmatier, Sjoquist,
Helget & Voigt, P.A.
6600 France Avenue South
Suite 501
Minneapolis, MN 5535